



US Army Corps
of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Number: 200450130

Date: May 24, 2004

Comments Due: June 23, 2004

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) proposes to issue a Regional General Permit (RGP) under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act for activities categorically excluded from further documentation under the National Environmental Policy Act (NEPA) by the U.S. National Park Service on Lake Mead and Lake Mohave within the Regulatory boundary of the Sacramento District. This notice is to inform interested parties of the proposal and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/cespk-co/regulatory/PNs/index.html>.

AUTHORITY: This proposal is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 for structures or work (including excavation) in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

LOCATION: Lake Mead and Lake Mohave in Lake Mead National Recreation Area in Clark County, Nevada and Mohave County, Arizona.

PROJECT DESCRIPTION: Refer to the enclosed copy of the proposed regional general permit.

ADDITIONAL INFORMATION:

Environmental Setting. Three of the nation's four desert ecosystems (the Mohave, the Great Basin, and the Sonoran Desert) meet in Lake Mead National Recreation Area. Lake Mead was created behind Hoover Dam in 1935 and filled completely in 1941. Lake Mohave was created and filled behind Davis Dam in the 1950s. At full pool, Lake Mead has a surface area of 157,900 acres with over 700 miles of shoreline, and Lake Mohave has a surface area of 28,260 acres and 150 miles of shoreline. The area is a regionally and nationally important resource for water-related recreation and other important uses, including hydropower and water supply. Portions of the recreation area, including a 300-foot zone around the shoreline of both lakes, are jointly administered by the National Park Service for recreation and resource protection and by the Bureau of Reclamation for project purposes and security areas at and around Hoover and Davis dams.

Alternatives. The no action alternative would mean that individual Department of the Army permit would be processed and issued for activities covered by the proposed RGP. Another alternative would be the inclusion of U.S. National Park Service categorically excluded activities within nationwide general permit number 23. However, this alternative would have to be

accomplished by the Office of the Chief of Engineers (OCE) in Washington, DC and therefore, is not within the purview of the Sacramento District. There is not any indication that OCE plans to modify nationwide permit to include NPS' categorically excluded activities. This nationwide permit is scheduled for regular reconsideration in 2007.

Mitigation. Specific proposals to perform work under the proposed RGP would be reviewed by the Corps before giving notice that the specific proposal is authorized by the RGP. The Corps requires consideration and use all reasonable and practical measures to avoid and minimize impacts to aquatic resources. If one is unable to avoid or minimize all impacts, the Corps may require compensatory mitigation on a case-by-case basis.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the states of Arizona and Nevada is required for this RGP. The Sacramento District will request certification from both states under separate cover.

HISTORIC PROPERTIES: Issuance of this RGP will not affect cultural resources. Specific requests to perform work under this general permit will be reviewed on a case-by-case basis for any effects on cultural resources and appropriate consultation with the respective State Historic Preservation Officers under Section 106 of the National Preservation Act. In some instances, the U.S. National Park Service may act as lead agency for purposes of compliance with Section 106.

ENDANGERED SPECIES: Issuance of the RGP will not affect any Federally-listed threatened or endangered species or their critical habitat that are protected by the Endangered Species Act. Specific requests to perform work under this RGP will be reviewed on a case-by-case basis for any effects to Federally-protected species and appropriate consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act. In some instances, the U.S. National Park Service may act as lead agency for purposes of compliance with Section 7.

EVALUATION FACTORS: The decision whether to issue this RGP will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed action. Any comments received will be considered by the Corps to determine

whether to issue, modify, condition, or deny the RGP. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 200450130, must be submitted to the office listed below on or before June 23, 2004:

Grady L. McNure, Project Manager
US Army Corps of Engineers, Sacramento District
St. George Regulatory Office
321 North Mall Drive, Suite L-101
St. George, Utah 84790-7310
Email: Grady.McNure@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reasons for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information, please contact the Corps' project manager, Grady L. McNure, at 435-986-3979 or Grady.McNure@usace.army.mil.

REGIONAL GENERAL PERMIT NUMBER (To Be Assigned)
US NATIONAL PARK SERVICE
CATEGORICALLY EXCLUDED ACTIVITIES
ON
LAKE MEAD AND LAKE MOHAVE

EFFECTIVE DATE:

EXPIRATION DATE:

Scope Of Work: This Regional General Permit (RGP) authorizes activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by the U.S. National Park Service (NPS) in Lake Mead that are categorically excluded from environmental documentation in accordance with the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)[40 CFR part 1500 et seq.] because the activity is within a category of actions that neither individually nor cumulatively have a significant effect on the human environment.

Issuing Office: U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 "J" Street
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

Project Location: Lake Mead and Lake Mohave in Lake Mead National Recreation Area within the Sacramento District in Clark County, Nevada and Mohave County, Arizona.

Notification Requirement: A potential permittee under this RGP must provide the St. George Regulatory Office with prior written notification before beginning an activity. This notification shall include a signed determination by the NPS that the activity is categorically excluded, and shall fully describe the project and its location, purpose and need, and the immediate project area. Submittal of sketches or drawings of the activity along with photographs of the work area is encouraged and may be required on a case-by-case basis. Work may not commence until you receive notice to proceed by the St. George Regulatory Office. The address and phone numbers of the St. George Regulatory Office are:

St. George Regulatory Office
Corps of Engineers, Sacramento District
321 North Mall Drive, Suite L-101
St. George, Utah 84790-7310
(435) 986-3979
(435) 986-3981 (Fax)

Additional Information: In accordance with Section 10 of the Rivers and Harbors Act, the Corps of Engineers regulates the construction of any structure in or over, excavation from, deposit of material in, or the accomplishment of any other work affecting the course, location, condition or capacity of any Navigable Waters of the United States. The Sacramento District considers the Colorado River from the Nevada-Arizona boundary to the Nevada-California boundary, including Lake Mead and Lake Mohave as Navigable Waters of the United States subject to permit authority under Section 10 and 33 CFR 329.

In accordance with Section 404 of the Clean Water Act, the Corps of Engineers regulates the discharge of dredged or fill material in waters of the United States. The Colorado River, including but not limited to, Lake Mead, and tributaries of the Colorado River, are waters of the United States subject to permit authority under Section 404 and 33 CFR 328.3(a).

The NPS Organic Act of 1916 is the most important and primary statutory directive for the NPS. This Act was later supplemented and clarified by the NPS General Authorities Act of 1970. The key management-related provision of the Organic Act is that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 USC 1."

The NPS has identified and published a number of activities that are categorically excluded from further documentation under NEPA. The NPS and the Sacramento District have cooperatively identified the following NPS' categorically excluded activities that can require a permit from the Corps of Engineers and are authorized by this RGP:

- * Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds, and trails.
- * Installation of signs, displays, and kiosks.
- * Installation of navigation aids.
- * Replacement in kind of minor structures and facilities with little or no change in location, capacity, or appearance--for example, comfort stations, pit toilets, fences, kiosks, signs and campfire circles.
- * Repair, resurfacing, striping, installation of traffic control devices, and repair/replacement of guardrails, culverts, signs, and other minor existing features on existing roads when no potential for environmental impact exists.
- * Changes in sanitary facilities operation resulting in no new environmental effects.
- * Installation of wells, comfort stations, and pit or vault toilets in areas of existing use and in developed areas.
- * Restoration of noncontroversial (based on internal scoping requirements) native species into suitable habitats within their historic range.
- * Removal of individual members of a non-threatened/endangered species or populations of pests and exotic plants that pose an imminent danger to visitors or an immediate threat to park resources.
- * Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historic, or cultural resources of the area or the integrity of the existing setting.

Extended regional drought conditions and decreasing Lake Mead water levels have especially increased the number of necessary actions that are categorically excluded by the NPS and that also require a Department of the Army permit from the Sacramento District. Eventually, as lake water levels rise, similar actions will be needed to meet this issue. Examples of these actions covered by this RGP are as follows:

- * Repair and extend launch ramps as necessary.
- * Adjust marina positions as water levels dictate.
- * Reconfigure breakwaters and add new breakwaters as necessary.
- * Manage water intakes, utilities, lift stations, and other infrastructure that exists below ordinary high water mark.
- * Reconfiguring bars and reefs as water level changes.
- * Grading harbor bottoms as needed to move marina facilities as water level changes.
- * Grading/maintenance of shorelines/beach areas.
- * Grading washes after flood events.
- * Culvert maintenance in washes.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends 3 years from the date that the office notifies you that you are authorized to proceed under this permit. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

8. Within 30 days of completing work, a written statement signed by the permittee shall be submitted to the St. George Regulatory Office certifying that the work has been completed in accordance with the terms and conditions of this permit.

Special Conditions:

[Special Conditions may be added based upon specific review of your request to perform work. Such special conditions would be included in a notice to proceed under the authorization of this RGP from this office.]

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant.

Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Andrew J. Rosenau
Chief, Regulatory Branch
(For the District Engineer)

Date